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China: Current U.S. Sanctions

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CURRENT U.S. SANCTIONS AGAINST CHINA

SUMMARY

In the months following China's 1989 Tiananmen Square crackdown, both the President and the Congress took a number of initiatives protesting Beijing's actions. These initiatives centered around U.S. concerns related to trade, human rights, and non-proliferation. In intervening years, the United States has periodically imposed, lifted, or waived other sanctions and concluded several trade-related agreements with China relating to these concerns. Those measures that remain in place in 1994 are detailed in the accompanying tables.

Immediately after the Tiananmen crackdown, on June 5, 1989, President Bush held a press conference to announce that he was ordering the following actions: suspension of all government-to-government military sales and commercial exports of weapons; suspension of visits between U.S. and Chinese military leaders; sympathetic review of requests by Chinese students in the United States to extend their stay; the offer of humanitarian and medical assistance through the Red Cross to those injured during the assault; and; review of other aspects of our bilateral relationship. On June 20, 1989, the President took the additional steps of suspending high-level U.S. Government exchanges with Chinese officials, and directing American representatives at various international financial institutions to seek to postpone consideration of new loans for China. With the exception of the latter and the ban on weapons sales, none of these Presidential initiatives remains in effect today.

In January of 1990, Congress passed H.R. 1487, the State Department Authorization bill for FY1990, 1991 (P.L. 101-246), which contained provisions relating to China. This law remains the major congressional action tightening U.S. sanctions against China since Tiananmen Square. Under its provisions, the United States continues to prohibit sales to China of military equipment and weapons; export of U.S. satellites; Overseas Private Investment Corporation (OPIC) and Trade Development Program (TDP) programs; export licenses for crime control and detection equipment; nuclear trade and cooperation; and liberalization of export controls on technology. In addition, the Clinton Administration recently imposed missile proliferation sanctions for missile equipment or technology listed in the Missile Technology Control Regime (MTCR) Annex. All sanctions provide some Presidential waiver authority.

In 1990, Congress turned to the annual Most-Favored-Nation (MFN) request for China as a key opportunity to exercise congressional influence over the general direction of U.S. China policy and to air congressional grievances about specific Administration decisions. Much of the U.S. debate over China policy since then has been on the question of China's MFN status. As a consequence of concerns raised during the MFN debate, since 1992 the United States has been active in pursuing a number of trade-related complaints against China. Those which have resulted in Memoranda-of-Understanding (MOU) include market access questions, intellectual property rights, and exports of prison-labor goods. While these are not sanctions per se, they concern possible retaliatory steps the United States could take in the future.

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CURRENT U.S. SANCTIONS AGAINST CHINA

The United States currently maintains sanctions against China in 8 areas. In all but one of these cases, the sanctions were imposed shortly after the Tiananmen Square crackdown of 1989, in protest to China's actions. Most of these sanctions were statutorily imposed by Congress. In addition, the Clinton Administration in August 1993 imposed non-proliferation sanctions on China, scheduled to be in effect for 2 years. All of the sanctions provide some type of waiver authority to the President.

1. Military equipment and weapons trade suspended (June 5, 1989, and Feb. 16, 1990)

The ban on weapons sales was first imposed by Presidential action on June 5, 1989, when President Bush announced he would prohibit all U.S. Government and commercial sales of military equipment and weapons. Congress later codified the prohibition in the State Department Authorization bill (H.R. 1487), which passed on January 30, 1990 and was signed by the President on February 16, 1990. It became P.L. 101-246, and is the primary source of existing U.S. sanctions against China.

P.L. 101-246 specifically prohibits the issuance of export licenses for items on the U.S. Munitions List, including helicopters and spare parts. It exempts from the prohibition those systems and components that are designed specifically for use in civil products, unless the President determines that the intended recipients of the articles are Chinese military or security forces. The law permits the President to waive this prohibition if important to the national interest or if he determines that China has made progress on a range of human rights issues specified in the law.

2. Export of U.S. satellites prohibited (Feb. 16, 1990)

By Congressional action, P.L. 101-246. The law specifically prohibits the export of "any satellite of United States origin" that is intended for launch from a Chinese launch vehicle. The law permits the President to waive the prohibition if important to the national interest or if he determines that China has made progress on a range of human rights issues specified in the law. On December 19, 1989, prior to the bill's passage, President Bush issued export licenses for 3 U.S. communications satellites for launch on Chinese vehicles under a "national interest" waiver authority contained in an earlier law, P.L. 101-162 (the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990), which expired in September 1990. Since the new prohibition was enacted in P.L. 101-246, the President has used his waiver authority on at least 7 occasions to permit the export of U.S. satellites for launch in China.

The specificity of the satellite prohibition in P.L. 101-246 leaves no doubt that Congress intended the ban to extend to all U.S. satellites. According to a State Department official, in practice, U.S. Administrations have considered waivers of the specific satellite ban to apply also to satellites with military-related components.

The satellite prohibition in P.L. 101-246 is one of two hurdles that satellites must clear before they can be exported to China. The second is the missile proliferation sanctions, imposed on August 24, 1993, listed in sanction #8 of this report.

3. Overseas Private Investment Corporation and Trade and Development Program activities suspended (Feb. 16, 1990)

By Congressional action, P.L. 101-246. OPIC provides political risk insurance to U.S. businesses seeking to invest in developing and emerging markets. TDP finances capital project feasibility studies performed by U.S. companies in developing countries. As enacted by Congress, the law permits the President to waive this prohibition for national interest reasons or if he determines that China has made progress on a range of human rights issues specified in the law. To date, no waivers have been granted.

4. Export licenses for crime control and detection equipment prohibited (Feb. 16, 1990)

By Congressional action, P.L. 101-246. As enacted by Congress, the law prohibits the issuance of any license under section 6(k) of the Export Administration Act of 1979 -- now section 6(n) of that Act -- for the export to China of any crime control or detection equipment. The law permits the President to waive this prohibition for national interest reasons or if he determines that China has made progress on a range of human rights issues specified in the law.

5. Nuclear trade and cooperation suspended (Feb. 16, 1990)

By Congressional action, P.L. 101-246. The law's prohibition here is comprehensive, applying to any nuclear material, facilities, or components; to goods or technology which could be significant for or are likely to be diverted to nuclear explosive purposes; to transfer or retransfer of any nuclear materials, facilities, or components; and to assistance in any activities with regard to China relating to the use of nuclear energy under section 57b.(2) of the Atomic Energy

Act of 1954. Provisions for terminating the prohibitions are stringent. The law requires three things: presidential certification that China has provided unequivocal assurances that it is not assisting and will not assist any nonnuclear-weapons state in acquiring nuclear explosive devices; a presidential report required by Public Law 99-183; and the national interest or human rights waivers findings required for termination of all suspensions in P.L. 101-246.

The Clinton Administration has recently decided to allow the sale of turbines and generators for Chinese nuclear power plants, and has determined that such a sale is not a violation of this sanction.

6. Termination of U.S. support for multilateral development loans to China except in cases of basic human need (June 20, 1989)

By Presidential action, June 20, 1989. The World Bank suspended its lending activities to China for 7 months following the Tiananmen Square crackdown, based on uncertainty that China would continue its economic reform program. In February 1990, the Bank made a loan for emergency earthquake assistance on humanitarian grounds. In July 1990, at the Houston summit, G-7 countries agreed on a policy of supporting World Bank loans for China that would promote economic reform and address "basic human needs" in China, but based on a definition more liberal than that contained in U.S. law. Since then, the United States has abstained on World Bank votes for loans to China that do not meet the restrictive statutory U.S. definition of "basic human need," which focuses on: growth with equity; a focus on the rural poor; food and nutrition; and population planning and health.

7. Liberalizing export controls by COCOM suspended (Feb. 16, 1990)

By Congressional action, P.L. 101-246. In the 1980s, the United States and the Coordinating Committee for Multilateral Export Controls (CoCom) had gradually liberalized restrictions and controls on exports of more advanced technology items to China. The export controls provision in P.L. 101-246 required the President to negotiate with CoCom to suspend this process of further liberalization.

Although CoCom did suspend the review process for liberalizing controls for China specifically, from early 1990 to May 1991 CoCom underwent a comprehensive rewriting of its "core list" of products, with the result that export controls were substantially relaxed across-the-board. Since then, CoCom has continued to further revise and liberalize its core list. China has received higher technology items under these relaxed controls, as have all other countries.

Finally, in November 1993, CoCom decided to disband itself no later than March 31, 1994. Negotiations are underway for a successor regime, with current plans to open membership to all countries, including China, based on their adherence to restrictions in nonproliferation regimes and their implementation of appropriate export control policies and an effective export control system.

8. Export of and contracts relating to items on MTCR list limited (Aug. 24, 1993)

The Clinton Administration imposed sanctions on entities in China after determining that China had shipped to Pakistan M-11 missile-related equipment listed in Category II of the MTCR Annex. Section 73(a) of the Arms Export Control Act (P.L. 90-629) and Section 11B of the Export Administration Act (P.L. 96-72) require U.S. sanctions in the event of such a determination. "Category II" refers to a category in the MTCR annex which lists components, equipment, material, and technology related to missiles.

The effect of the August 24 sanctions is to deny for 2 years U.S. Government contracts with the sanctioned entity, and licenses for transfer to the sanctioned entity, for missile equipment or technology listed in the MTCR Annex. The law provides for a very restrictive waiver, permitting the President to waive the sanctions only if he determines it is "essential" to U.S. national security. U.S. officials have not commented publicly on the content of U.S.-China discussions on this issue, although according to one U.S. official, the U.S. Government has described to Chinese officials exactly what they must do to qualify for the national security waiver. On January 26, 1994, the United States began a series of nonproliferation discussions with China, led by Under Secretary of State Lynn Davis.

The August 24 sanctions also are the second hurdle that satellite exports to China must clear. Although the MTCR Annex does not directly mention satellites, it does list components which might be found in satellites. Some satellites are on the U.S. munitions list because they contain items of concern to national security; export licenses for these satellites are controlled by the State Department. With respect to the August 24 sanctions, the Administration has determined that the sanctions law requires the Department of State to deny for China all licenses for satellites containing MTCR Annex item components. But other satellites -- essentially commercial communications satellites that do not contain technology of concern to national security -- are controlled by the Department of Commerce. The Administration has determined that these satellites are not captured by the August 24 sanctions because Commerce regulations and practices do not treat licenses for satellites as licenses for their MTCR components. On January 7, 1994, the Administration determined that the Commerce Department could approve licenses for three communications satellites for export to China.

TRADE-RELATED MEASURES

In addition to the above sanctions, since 1992 the United States has been active in pursuing a number of trade-related complaints against China. Although these are not sanctions *per se*, they do deal with possible retaliatory steps that the United States could take against China in the future to ensure compliance. They also echo the trade-related concerns and conditions Congress has considered in past MFN legislation.

1. MOU on market access (October 10, 1992)

On October 10, 1992, the United States and China signed an MOU that resolved a year-long Section 301 investigation into China's trade barriers to U.S. imports and forestalled close to \$4 billion in retaliatory U.S. sanctions. The Section 301 investigation itself had been initiated as a result of the lack of progress on two earlier, related actions: the Bush Administration's April 1991 "market access" initiative, to convince China to reduce its trade barriers; and the Bush Administration's July 1991 decision to launch a special round of market-access negotiations with China. Those negotiations having failed to make progress, on October 10, 1991, the President directed the United States Special Trade Representative's office (USTR) to initiate a sweeping Section 301 case against a number of China's unfair trade practices. Over the next year, U.S. and Chinese officials held an additional 9 rounds of talks before reaching the 11th-hour agreement settling the case on October 10, 1992.

Under the MOU, China pledged to publish its trade laws and regulations; eliminate a range of tariff barriers including tariffs, quotas, import restrictions, import licenses, and import substitution laws; and establish a joint working group on standards and testing barriers to agricultural products. The United States pledged to "staunchly support" China's entry into the GATT and reduce export controls on computer and telecommunications equipment to China.

U.S. officials remain concerned about China's implementation of the MOU. On November 2, 1993, the USTR once again warned of sanctions if China failed to fully implement the agreement.

2. MOU on exports of prison labor goods (August 7, 1992)

On August 7, 1992, the United States and China formally signed an MOU to ensure that products made by prison labor in China are not exported to the United States. The agreement came more than a year after the Bush Administration, in July 1991, pledged to increase U.S. Customs Service inspections of imported Chinese products, and after U.S. officials had begun to ban the release of Chinese imports suspected of being produced by forced labor.

Under the MOU, China was to permit U.S. Customs officials to inspect Chinese prisons suspected of producing goods for export.

In early 1993, China did allow U.S. Customs officials to inspect two Chinese prisons, but thereafter denied further access. On January 20, 1994, during his visit to Beijing, Treasury Secretary Lloyd Bentsen announced that the United States and China had reached a new agreement to permit the inspections to go forward.

The import of prison-made goods has been prohibited under U.S. law since 1890 (Section 53 of the McKinley Tariff Act, 26 Stat. 567, 624 [1890], now found at 19 U.S.C., section 1307.) U.S. criminal law also provides fines and/or imprisonment for knowingly transporting prison-made goods into the United States.

**3. MOU on improving intellectual property rights (IPR)
(January 16, 1992)**

On January 16, 1992, the United States and China signed an MOU to resolve U.S. charges that China had failed to provide adequate protection for U.S. intellectual property. U.S. allegations of violations had surfaced formally in April 1991, when the USTR named China (along with India and Thailand) as priority countries that violate U.S. intellectual property rights under "Special 301" provisions of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418). On May 26, 1992, USTR initiated a formal investigation into deficiencies in China's intellectual property practices, then extended the investigation on November 26, 1991, after determining that insufficient progress had been made. At that time, USTR warned that trade sanctions would be enacted against certain Chinese imports if an agreement were not reached by January 16, 1992.

Under the January 1992 MOU, China agreed to strengthen its patent, copyrights, and trade secret laws; and agreed to improve protection of U.S. intellectual property, including computer software, sound recordings, and chemicals. Although China reportedly has progressed in implementing the MOU, U.S. officials remain concerned about China's enforcement of its provisions. The United States has identified Chinese firms which have violated U.S. intellectual property rights, and have pressed China to take legal action. On November 2, 1993, the USTR once again warned of sanctions if China failed to fully implement the agreement.

MOST-FAVORED-NATION (MFN) STATUS

♦ Conditioning China's MFN status (May 28, 1993)

By Executive Order of the President, May 28, 1993. Under U.S. law, China's eligibility for MFN status is subject to an annual renewal, which the President must request by June 3, and which automatically goes into effect if Congress does not enact a joint resolution of disapproval within 60 days. On May 28, 1993, President Clinton issued a Report to Congress and an Executive Order which effectively continued China's unconditional MFN status for another year (through July 1994), but placed conditions on China's MFN status in succeeding years.

Under the President's Executive Order, the Secretary of State may not recommend an extension of China's MFN treatment in 1994 unless he determines (1) that China has abided by its 1992 agreement with the United States to halt exports of prison labor products to the United States, and (2) that an extension will substantially promote the freedom-of-emigration objectives in the Jackson-Vanik amendment to the 1974 Trade Act. In addition, in making his recommendation the Secretary must determine whether China has made overall significant progress in human rights, including: adhering to the Universal Declaration of Human Rights; releasing and acceptably accounting for political prisoners; ensuring humane treatment of prisoners; protecting Tibet's religious and cultural heritage; and permitting international radio and television broadcasts into China.

Prior to the President's Executive Order, Members of Congress in 1993 introduced legislation to require that conditions be placed on China's MFN status (S. 806, Mitchell, and H.R. 1890, Pelosi). Although these measures are still pending, both the House and Senate sponsors expressed their support for the President's May 28 Executive Order over their own bills, in effect suspending debate on the bills in 1993.

OTHER CONGRESSIONAL MEASURES

In addition to the sanctions and trade-related measures described in this report, Congress has considered a number of other bills relating to China. Among these are: the Chinese Student Protection Act of 1992 (P.L. 102-404), which permitted many Chinese students living in the United States to qualify for permanent resident status beginning July 1, 1993; and the U.S.-Hong Kong Policy Act of 1992 (P.L. 102-383), containing detailed U.S. policy prescriptions toward the territory. These cannot generally be described as "sanctions," and so have not been included in this report. For further information on these and other measures, please refer to the Additional Reading sources.

ADDITIONAL READING

U.S. Library of Congress. Congressional Research Service. China-U.S. Relations and MFN Status: Issues and Options, by Vladimir Pregelj. (Issue Brief IB91524).

----- China-U.S. Relations: Implications for Congress, by Kerry Dumbaugh. (Issue Brief IB94002).

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----- Chinese Missile and Nuclear Cooperation, by Robert Shuey. (Issue Brief IB92056.)

----- China and Congress in 1992, by Kerry Dumbaugh. October 12, 1993. (CRS Report #93-894 F).

----- China's MFN Status: U.S. Wheat Exports, by Carl W. Ek and Susan B. Epstein. June 1, 1993. (CRS Report #93-541 ENR).